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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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JA PASQUETTI ENTERPRISES, LLC,

Plaintiff and Appellant,

v.

BRYAN HEAVY EQUIPMENT, INC.,

Defendant and Respondent.

C087739

(Super. Ct. No.  
S-CV-0040274)

This appeal presents the question of whether the single sale of a used hauling truck by an Iowa corporation to a California company constitutes sufficient minimum contact to confer California courts with specific jurisdiction over a claim that the truck was defective. The trial court granted a motion brought by defendant Bryan Heavy Equipment, Inc. (BHE) to quash the summons on grounds of insufficient minimum contact with California. Plaintiff JA Pasquetti Enterprises, LLC (Pasquetti) appeals the order granting the motion to quash.

On appeal, Pasquetti contends (1) the sale of the truck gave rise to specific jurisdiction because BHE agreed to send the truck to California and warranty it after delivery, and (2) BHE's motion to quash was not timely filed.

We conclude BHE's contractual assumption of a continuing duty to Pasquetti to "stand by" its repair after delivering the truck to California supports specific jurisdiction. Accordingly, we reverse. Our conclusion that the trial court erred in determining there was no specific jurisdiction obviates the need to consider Pasquetti's argument BHE did not timely file its motion to quash.

#### FACTUAL AND PROCEDURAL HISTORY

In October 2017, Pasquetti filed a complaint against BHE in Placer County to allege fraudulent inducement and breach of contract arising out of the sale of a Caterpillar articulated dump truck. In December 2017, BHE brought a motion to quash the service of summons. In support of the motion to quash, BHE introduced a declaration of Doug Bryan, BHE's president, stating the following: BHE sells new and used heavy equipment in Iowa and has no offices or business connections outside of Iowa. All BHE shareholders are Iowa residents. In April or May 2017, BHE posted an advertisement on the internet for the sale of a used Caterpillar hauling truck. The advertisement "was not targeted at California or any other state." The truck "was sold in Iowa FOB and ownership rights transferred to Pasquetti in Iowa. Pasquetti paid Iowa sales tax on the purchase because the truck was purchased in Iowa." (Some capitalization omitted.) BHE does not conduct sales activities in California.

Also in support of the motion to quash, BHE introduced the invoice for the sale of the hauling truck. The invoice is addressed to "JA Pasquetti Enterprises, LLC [¶] 6390 Wells Ave [¶] Loomis, California 95650" (Some capitalization omitted.) The invoice acknowledges receipt of \$267,000 from Pasquetti for purchase of the truck. The following notes are included on the invoice: "Machine had EGR cooler replacement, light residue of glycol remain in engine oil system. At 100 hours customer will take oil

sample, if high levels of glycol result, and engine oil is high and milky, Bryan Heavy Equipment will stand behind repair. [¶] BHE is shipping machine, applicable tax will be paid in CA.” (Some capitalization omitted.) Incongruously, the invoice also includes the following disclaimer: “All used units are sold as is where is, with no warranty. [¶] IA Sales tax = 6%.” (Some capitalization omitted.)

Pasquetti opposed the motion to quash. In opposing the motion, Pasquetti submitted a declaration by Mike Dutro, who negotiated the purchase on behalf of Pasquetti. Dutro declared as follows: He works for an authorized Caterpillar dealer in Sacramento. In May 2017, he called BHE on behalf of Pasquetti to inquire about an advertisement for the hauling truck. Dutro spoke with Bryan who said “that BHE had recently performed some repairs on the haul truck but that it was in good condition and that it was ‘rental ready.’ He also told me that his company would stand behind the repair work that they had performed. By his representation that it was ‘rental ready,’ I understood . . . Bryan to mean that BHE was warranting that it was selling a haul truck that was ready to go to work immediately in the field by JA Pasquetti once it was delivered to California.” Dutro “also told . . . Bryan that JA Pasquetti would need BHE to transport and deliver the haul truck from Iowa to California to JA Pasquetti’s inventory yard located in Placer County, and (on behalf of BHE) . . . Bryan agreed to that as part of the \$267,000 purchase price.” Dutro also noted the invoice “provides that ‘BHE is shipping machine’ and that ‘applicable tax will be paid in California.’ ” Pasquetti also argued the motion to quash had not been timely filed.

The trial court granted the motion to quash, finding the motion had been timely filed and BHE lacked minimum contacts with California to confer specific jurisdiction. The trial court reasoned that the single business transaction in this case was not sufficient to establish BHE had purposefully availed itself of forum benefits. From the order, Pasquetti timely filed a notice of appeal.

## DISCUSSION

Pasquetti argues the sale of the hauling truck in this case conferred California courts with specific jurisdiction to adjudicate claims against BHE regarding the truck's defects. BHE counters that "it is not entirely clear whether [Pasquetti] contends that the court below could exercise general jurisdiction, as opposed to specific jurisdiction, over BHE." Although Pasquetti's briefing could be clearer, we determine Pasquetti advances a specific jurisdiction argument in contending that "the trial court erred in finding that BHE's dealings and transaction with Pasquetti Enterprises did not establish sufficient minimums with the forum state of California for the trial court to exercise *specific personal jurisdiction* over BHE . . . ." (Italics added.) We conclude the terms of the sales contract establish a continuing duty by BHE that can only be fulfilled in California so that this state has specific jurisdiction over Pasquetti's claim.

### A.

#### *Specific Jurisdiction*

California's long-arm statute provides that California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) "The exercise of jurisdiction over a nonresident defendant comports with these Constitutions " " " " "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate " "traditional notions of fair play and substantial justice." ' ' ' ' ' (Snowney v. Harrah's Entertainment, Inc. (2005) 35 Cal.4th 1054, 1061 (Snowney), quoting Vons Companies, Inc. v. Seabest Foods, Inc. (1996) 14 Cal.4th 434, 444 (Vons).) This rule reflects the consideration that "each individual has a liberty interest in not being subject to the judgments of a forum with which he or she has established no meaningful minimum 'contacts, ties or relations.' " (Vons, at p. 445, quoting Burger King Corp. v. Rudzewicz (1985) 471 U.S. 462, 471-472 [85 L.Ed.2d 528] (Burger King).)

Personal jurisdiction may be general or specific. (*Vons, supra*, 14 Cal.4th at p. 445.) General jurisdiction requires that contacts with the forum state be substantial, continuous, and systematic. (*Ibid.*) By contrast, specific jurisdiction may arise out of a single sales transaction. (*Moncrief v. Clark* (2015) 238 Cal.App.4th 1000, 1007 (*Moncrief*); see also *Vons*, at p. 446.) In determining whether specific jurisdiction exists, we consider “ ‘the “ ‘relationship among the defendant, the forum, and the litigation.’ ” (*Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408 414 [80 L.Ed.2d 404], quoting *Shaffer v. Heitner* (1977) 433 U.S. 186, 204.) A court may exercise specific jurisdiction over a nonresident defendant only if: (1) “the defendant has purposefully availed himself or herself of forum benefits” (*Vons, supra*, 14 Cal.4th at p. 446); (2) “the ‘controversy is related to or “arises out of” [the] defendant’s contacts with the forum’ ” (*ibid.*, quoting *Helicopteros, supra*, 466 U.S. at p. 414); and (3) “ ‘the assertion of personal jurisdiction would comport with “fair play and substantial justice.” ’ ” (*Vons, supra*, 14 Cal.4th at p. 447, quoting *Burger King*[, *supra*,] 471 U.S. [at pp.] 472-473 . . . .)’ [Citation.]” (*Snowney, supra*, 35 Cal.4th at p. 1062.)

In *Moncrief*, a single sales transaction sufficed to confer specific jurisdiction on the California courts. (*Moncrief, supra*, 238 Cal.App.4th at p. 1007.) *Moncrief* involved a California attorney who was sued for legal malpractice arising out of the unsuccessful purchase of farm equipment. (*Id.* at p. 1003.) Acting on behalf of a California partnership, the attorney conducted due diligence regarding the ownership of farm equipment owned by a farm in Arizona. (*Id.* at p. 1003-1004.) The California attorney mistakenly accepted a representation by an Arizona lawyer for the farm that the farm owned the equipment free and clear. Instead, a New York bank held an interest in the Arizona farm’s equipment. (*Id.* at p. 1004.) The sale fell through when the California partnership learned the Arizona farm held only partial interest in the equipment. (*Ibid.*) The California partnership sued its attorney, who in turn filed a claim of equitable indemnity in California against the Arizona lawyer. (*Ibid.*) The Arizona lawyer moved

to quash summons for lack of jurisdiction, and the motion was granted by the trial court. (*Ibid.*)

In *Moncrief*, the trial court reasoned the Arizona lawyer did not purposefully avail himself of any forum benefits: he did not reach out to the California buyer or target California. (*Moncrief, supra*, 238 Cal.App.4th at p. 1004.) The *Moncrief* court reversed, holding the Arizona lawyer “targeted” the California attorney “with the specific purpose of inducing [the California lawyer’s] client to finalize the purchase of farm equipment from [the Arizona farm]. [The Arizona lawyer’s] contacts with California are not akin to maintaining a passive Web site available to California residents” that might be insufficient to confer specific jurisdiction. (*Id.* at p. 1007.) Even if the transaction does not begin by targeting the forum state, personal jurisdiction may nonetheless be based on inducing a party in the forum state to enter into a sale for benefit for the out-of-state seller.

We also benefit from the California Supreme Court’s guidance in *Secrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664 (*Secrest*). In *Secrest*, a manufacturer that was incorporated in Delaware with its principal place of business in Virginia sold a leveling machine for use in a California steel plant. (*Id.* at p. 667.) A California worker who lost five fingers using the leveling machine brought action in California against the out-of-state manufacturer. (*Ibid.*) The evidence showed there was an oral agreement between the manufacturer and the California steel plant that acceptance of the machine was conditioned on satisfactory performance in the California plant. (*Id.* at p. 668.) To fulfill this term, the manufacturer sent an employee to California who assisted with installation of the machine. (*Ibid.*) The California Supreme Court determined personal jurisdiction existed over the out-of-state manufacturer who profited financially by selling the leveler for use in California, sending an employee and spare parts to California, and continuing to give advice on maintenance. (*Id.* at p. 671.)

For review of a challenge to the trial court's granting of a motion to quash service of process for lack of personal jurisdiction, "the question whether a defendant's contacts with California are sufficient to justify the exercise of personal jurisdiction in this state is a question of law that we review de novo. [Citation.] If there is a conflict in the evidence underlying that determination, we review the trial court's express or implied factual findings under the substantial evidence standard." (*HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1168.)

Here, the question of personal jurisdiction turns in large part on the invoice for the sale of the dump truck generated by BHE. In the absence of disputed evidence, we apply the independent standard of review to the question of contract interpretation. " 'When no extrinsic evidence is introduced, or when the competent extrinsic evidence is not in conflict, the appellate court independently construes the contract. [Citations.] When the competent extrinsic evidence is in conflict, and thus requires resolution of credibility issues, any reasonable construction will be upheld if it is supported by substantial evidence. [Citations.]' " (*Reilly v. Inquest Technology, Inc.* (2013) 218 Cal.App.4th 536, 554 (*Reilly*), quoting *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955-956 (*Founding*).)

In construing the terms of a sales contract, we are guided by the goal of giving effect to the parties' mutual intent at the time of agreement. (*Reilly, supra*, 218 Cal.App.4th at p. 554.) " 'California recognizes the objective theory of contracts [citation], under which "[i]t is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation" [citation]. The parties' undisclosed intent or understanding is irrelevant to contract interpretation. [Citations.]' " (*Ibid.*, quoting *Founding, supra*, 109 Cal.App.4th at p. 956.)

We read the language of a sales contract as a whole. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18.) However, " '[s]pecific terms of a contract

govern inconsistent, more general terms.’ ” (*San Pasqual Band of Mission Indians v. State of California* (2015) 241 Cal.App.4th 746, 761, quoting *Idaho v. Shoshone–Bannock Tribes* (9th Cir.2006) 465 F.3d 1095, 1099.) To this end, Code of Civil Procedure section 1859 provides: “In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.” (Code Civ. Proc., § 1859.)

**B.**

***Purposeful Availment of Forum Benefits***

The trial court erred in granting BHE’s motion to quash. The terms of the sale listed on BHE’s invoice establish purposeful availment of forum benefits. Specifically, BHE guaranteed it “will stand behind repair.” (Capitalization omitted.) The obligation to make the repair necessarily would occur in California because BHE noted it was shipping the machine to California, and the duty to repair would be triggered by the results of Pasquetti’s sampling the engine oil after 100 hours of operation. BHE’s express assumption of a continuing obligation established a continuing relationship with California to warranty the condition of the truck even after 100 hours of operation. By including delivery of the machine to California in the substantial purchase price of \$267,000 *and* a continuing obligation to “stand behind” its repair to the machine, BHE purposefully availed itself of forum benefits to complete the sale. (*Secrest, supra*, 33 Cal.3d at pp. 669, 671-672.) The warranty on the truck’s repair stood as an inducement for the California purchaser to enter into the contract.

We are not persuaded by BHE’s contention that the invoice disclaimed any warranty for the truck. In support of the argument, BHE refers to language in the invoice stating: “All used units are sold as is where is, with no warranty.” (Capitalization omitted.) Although this may have represented BHE’s usual practice, the invoice



establishes that the sale in this case was accompanied by a warranty. The invoice detailed that the truck engine had been repaired by EGR cooler replacement. To verify the continuing efficacy of the repair, the invoice specifically called for Pasquetti to take an oil sample after 100 hours of operation. The invoice even articulated the standard that would trigger BHE's obligation to stand behind its repair, namely if the 100-hour engine oil sample were high in levels of glycol and "milky" as a result. Notably, Bryan's declaration in support of the motion to quash does not deny that the invoice created a continuing obligation to warranty the engine repair based on the 100-hour sample by Pasquetti.

The continuing relationship between BHE and Pasquetti supports specific jurisdiction. For this reason, we reject BHE's reliance on *Shisler v. Sanfer Sports Cars, Inc.* (2006) 146 Cal.App.4th 1254 (*Shisler*). *Shisler* involved a California car buyer who purchased a vehicle from a Florida corporation with no physical presence in California. Over the course of more than three decades, the Florida corporation sold more than 44,800 vehicles – of which fewer than 10 were sold to California residents. (*Id.* at p. 1257.) The California buyer saw a 2002 vehicle advertised on the seller's Web site, which was not targeted to California residents. (*Ibid.*) When the buyer asked about shipping arrangements, the seller sent him a list of shipping companies. The buyer selected a shipping company and title to the vehicle passed when the shipper took possession of the vehicle in Florida. (*Id.* at p. 1258.) The buyer sued for fraud in California, and the trial court granted the Florida corporation's motion to quash for lack of minimum contacts. (*Ibid.*)

The *Shisler* court held that mere use of electronic communication to facilitate the sale – including telephone calls and an advertisement placed on the Internet – did not suffice to create minimum contacts with California. (*Shisler, supra*, 146 Cal.App.4th at p. 1260.) As *Shisler* notes, "maintenance of the Web site alone is insufficient to establish personal jurisdiction." (*Id.* at p. 1261.) So too, telephone calls may not create sufficient

contact for specific jurisdiction. (*Ibid.*) The facts of *Shisler*, however, are markedly different from this case. Here, BHE agreed to ship the truck to California and gave a warranty for the engine repair calling for an engine oil sample after 100 hours of operating time. The facts of this case establish continuing contact with California that supports personal jurisdiction.

BHE next contends there was no purposeful availment because its advertisement for the truck that truck was sold “FOB” in Iowa and ownership rights were transferred in Iowa. In addition, BHE points out it has never conducted any other business in California. Thus, BHE urges us to conclude it does not have substantial, continuous, and systematic contacts with California. We disagree.

As we noted above, Pasquetti has presented a claim that California courts have specific jurisdiction over this case. For specific jurisdiction, a single sales transaction can suffice. (*Moncrief, supra*, 238 Cal.App.4th at p. 1007.) Although the mere posting of an advertisement on the Internet without directing it at the forum state may not establish personal jurisdiction (*Snowney, supra*, 35 Cal.4th at p. 1063), the terms of the sale in this case establish far more than mere non-forum-specific advertisement. Regardless of where title to the truck passed to Pasquetti, the invoice shows BHE delivered the truck to California. The invoice confirms BHE “is shipping machine” to California. (Capitalization omitted.) The warranty on the repair at 100 hours of operation established a continuing obligation that could be only fulfilled in California. And that obligation was an inducement in making the sale. Because California has specific jurisdiction over Pasquetti’s claim, the trial court erred in granting BHE’s motion to quash.

## DISPOSITION

The order granting the motion to quash summons of process for lack of personal jurisdiction is reversed. JA Pasquetti Enterprises, LLC, shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/s/  
HOCH, J.

We concur:

/s/  
MURRAY, Acting P. J.

/s/  
RENNER, J.